IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 5212 of 2001 (M/S)
(Old CMWP No. 8047 of 1990)

Jagdish Sinha son of Sri Beni Madho Sinha, resident of 3, Jain Bhawan, Mussoorie, Derhadun.

…… Petitioner.

Versus

1. The Rent Control and Eviction Officer, Mussoorie, Dehradun.
2. Sri Mahesh Chandra Gupta, Rent Control & Eviction Officer, Mussoorie, Dehradun.
3. Sri Rajedndra Prasad Pande, son of Sri Raghunath Prasad Singh, resident of C/O Dr. Sunil Sanon, Long Side, Lowor, Mussoorie, District Dehradun.
4. Gyan Chand, son of not known, resident of C/O Rent Control & Eviction Officer, Mussoorie, Dehradun.

….. Respondents.

Sri Gopal Narain, learned counsel for the petitioner.
None is present for the respondent no.3 despite sufficient service.
Sri Tanuj Semwal, learned counsel for the respondent no.4.

Dated May 03, 2007.

Hon'ble B.S. Verma, J.

This writ petition has been preferred to issue a writ, order or direction in the nature of certiorari quashing the order dated 14-3-1990 passed by the Rent Control and Eviction Officer Mussoorie ***(for short R.C. & E.O.),*** whereby the premises in question was declared vacant in Case No. 50/88.

The writ petition was filed on the ground that the petitioner was not heard. He is a tenant of the premises, which was allotted to him by the R.C. & E.O. Mussoorie vide allotment order dated 6.5.1965. By the impugned order, the premises in question was declared vacant on the basis of the report of Rent Control Inspector (Annexure No. 6 to the writ petition). The proceedings were initiated on the application moved by one Rajendra Prasad Pandey, respondent no.3.

The report of Rent Control Inspector dated 2-8-1988 has been annexed as Annexure No. 6. It has been mentioned in the report that the inspection of the suit accommodation was made in presence of Sri Rajendra Prasad, the applicant (respondent no.3), Sri Jagdish Sinha, present occupant, local resident Jagdish Prasad Bhatt, Sardar Gurdeep Singh, and Chowkidar of the building Raghunath Prasad.

It was found by the Rent Control Inspector at the time of inspection that there were household articles including cot, bed, furniture and edible items inside the flat belong to the occupant. It was told by the occupant Sri Sinha that the falt was allotted to him in the year 1965 and he is a lecturer in D.A.V. College Dehradun and during vacation, he uses the accommodation and the house is in his possession.

On the other hand, from a perusal of the impugned order, finding has been given by the R.C. & E.O. that the household articles have been replaced from the allotted accommodation and none of the members of his family is residing in Mussoorie. The name of Jagdish Sinha does not exist in the voter list the he had no ration card in his name of that flat in the locality. The R.C. and E.O. was of the view that the allottee Jagdish Sinha was not having any electricity or water connection. The impugned order declaring vacancy has been passed on the ground that the petitioner is a lecturer in D.A.V. college, Dehradun, therefore, it is not necessary that he must cast his vote at Mussoorie and possess a ration card there. Before the Rent Control and Eviction Officer, landlord did not file any application and the application had been moved by a third person and he is not turning up before this Court.

In support of his contention, the petitioner has filed copies of receipt of bill of water charges and the payment made

towards electricity charges as also the copy of allotment order dated 6-5-1965 passed in his favour by the R.C. & E.O.

In the impugned order, the R.C. & E.O. has held that there is no water connection and electricity connection in the flat, though the Rent Control Inspector in his report dated 2-8-1988 did not make any such type of comment. The contention of the petitioner that there exists water connection and electricity connection in his name find force from a perusal of the copies of water charges receipts and electricity bills paid by the petitioner. It is thus clear that the Rent Control and Eviction Officer has mis-read the report made by the Rent Control Inspector and gave a perverse finding of vacancy, which cannot be sustained. The writ petition is liable to be allowed.

In the facts and circumstances of the case, as detailed above, the writ petition is allowed and the order dated 14-3-1990 declaring vacancy of the accommodation in Allotment Case No. 50/88 (Annexure No.13) passed by the Rent Control and Eviction Officer Mussoorie is hereby set aside. No order as to costs.

Interim order dated 5-4-1990 is vacated.

All applications stand disposed of.

(B.S.Verma, J.)

RCP